



CALIFORNIA ENERGY COMMISSION

Staff Workshop

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CALIFORNIA ENERGY COMMISSION

1516 Ninth Street

First Floor, Hearing Room A

Sacramento, California

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Rulemaking Timeline

Pre-Rulemaking Phase

- January 11, 2012 – Order Instituting Rulemaking adopted by Commission
- March 23, 2012 – Staff Workshop
- Draft of proposed regulations published for stakeholder review and comment
- May 2012 – Staff Workshop on draft of proposed regulations



Rulemaking Timeline (cont.)

Formal APA-Rulemaking Phase

- August 2012 – NOPA and ISOR filed with OAL and published in Notice Register
 - Start of 45-day comment period
- Public hearing on proposed regulations
- Possible publication of 15-day language and comment period
- December 2012 – Adoption of regulations by Commission



Staff Workshop Agenda

1. Welcome & Introduction
2. Staff Presentation
3. Stakeholder Comments to the Request for Information
4. Lunch Break
5. Stakeholder Comments (continued)
6. Closing & Next Steps



Staff Presentation

- Overview of Appliance Efficiency Program
- Overview of our current enforcement practices
- Senate Bill (SB) 454 and what it authorizes
- Other enforcement models evaluated
- Request For Information (RFI)
- Closing and next steps



Overview of Appliance Efficiency Program

California's Appliance Efficiency Regulations:

- Established in 1976
- First of their kind in the country
- Have been adopted by other states
- Foundation of the federal National Appliance Energy Conservation Act (NAECA)
- Significant contribution to California's overall energy savings





Overview of Appliance Efficiency Program

Elements of program:

1. Regulations and standards development
2. Certification and compliance
3. Outreach
4. Enforcement



Overview of current enforcement practices

- Receipt of complaint
- Verification of non-compliance
- Written notification of violation
- Informal administrative hearing
- Referral of the matter to the Attorney General for injunctive relief



Overview of current enforcement practices

Receipt of complaint

- What is the product?
 - Regulated product
 - Manufacturer, model, date of manufacture
- What is the nature of the non-compliance?
 - Failure to certify
 - Failure to meet a state or federal standard
 - Efficiency values in question



Overview of current enforcement practices (cont.)

Verify non-compliance

- Does model appear in the appliance efficiency database?
- Was sale or offer for sale confirmed via market survey or other means?
- If a standards violation or efficiency values complaint, should independent testing be conducted?



Overview of current enforcement practices (cont.)

- 1st and 2nd request letters to manufacturers and retailers
- Request and review manufacturer's test reports
 - Section 1608(c)
- Testing (possibly at manufacturer's expense)
 - Section 1608(e)
- For federally-regulated appliances, report results of testing to appropriate federal agency
 - Section 1608(g)



Overview of current enforcement practices (cont.)

Informal administrative hearing process

- To remove models from the database:
 - Section 1608(e)(2)(C)
- To modify a model's efficiency listing in the database:
 - Section 1608(e)(2)(B)



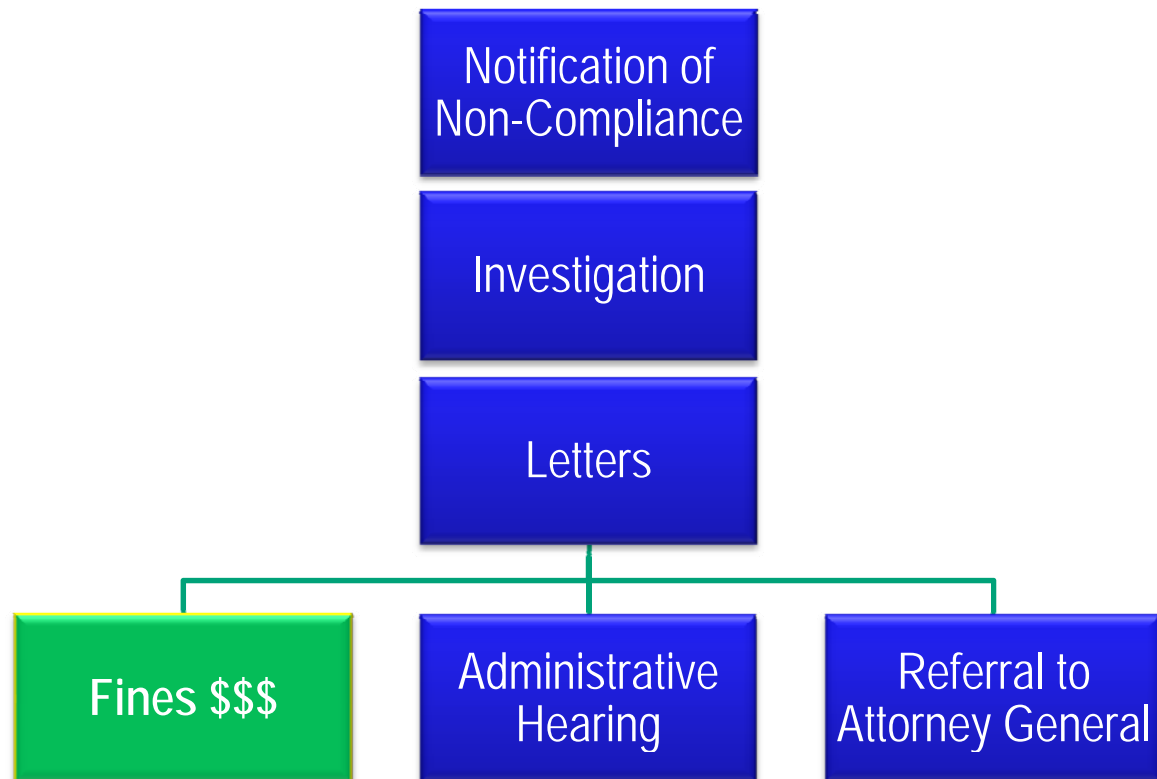
Overview of current enforcement practices (cont.)

Uncertified appliances being sold or offered for sale in California

- Complaint and request for investigation
 - Section 1230, *et seq.*
- Referral to the California Attorney General's Office for injunctive relief



Overview of current enforcement practices (cont.)





Senate Bill (SB) 454

The Legislature found and declared that:

- “. . . inadequate certification of appliances sold in California undermines the state’s ability to ensure that products sold in California meet the state’s efficiency standards . . . These violations result in a substantial financial loss to consumers who purchase energy efficiency goods and services, and represent unfair competition that dramatically impacts the economic viability of legitimate businesses.”



SB 454 (cont.)

- Passed by the Legislature and signed by the Governor in 2011
- Became effective January 1, 2012
- Added Section 25402.11 to the California Public Resources Code
- Amended Section 25900 of the California Public Resources Code



SB 454 (cont.)

- Authorizes the Commission to adopt regulations establishing an administrative enforcement process
 - Administrative penalty not to exceed \$2,500 for each violation
- Authorizes a civil court action to assess a civil penalty not to exceed \$2,500 for each violation
 - Cannot be liable for both an administrative penalty and a civil penalty for same violation



SB 454 (cont.)

- Administrative enforcement process must comply with the Administrative Adjudication provisions of the California Administrative Procedure Act (APA), which include:
 - Notice and opportunity to be heard
 - Right to an open and public hearing
 - Unbiased presiding officer / decision maker
 - Written decision based on the record, including factual and legal basis for the decision



SB 454 (cont.)

- Amount of the administrative penalty to be based on:
 - nature and seriousness of the violation;
 - number of violations;
 - persistence of the violation;
 - length of time over which violation occurred;
 - willfulness of the violation;
 - violator's assets, liabilities and net worth; and
 - harm to consumers and California resulting from energy wasted



SB 454 (cont.)

- Commission must wait 30 days after giving written notification of a violation before initiating administrative enforcement process
- Penalties collected for public education regarding energy efficiency and for enforcement
- In civil action, Commission entitled to reasonable costs incurred in investigating and prosecuting action



SB 454 (cont.)

- Rebate given for energy efficient equipment installation may be disbursed only if the installation was done by a licensed contractor

Not part of the current rulemaking

- Falls under authority of the California Public Utilities Commission



Other enforcement models evaluated

- U.S. Department of Energy
- California Air Resources Board
- California State Water Resources Control Board
- CalRecycles



Other enforcement models evaluated (cont.)

Processes these models have in common:

- Identification & investigation of non-compliance
- Assessment of monetary penalties
- Informal & formal enforcement actions
- Settlement options
- Public disclosure of violations
- Compliance with California's APA



Request for Information (RFI)

Administrative procedure



- What is a reasonable amount of time to allow a manufacturer/retailer to take corrective action?
- Are there additional steps the Commission should include in the process?
- Are there alternative enforcement models the Commission should consider?
- How should the Energy Commission's enforcement process interact with the enforcement processes of other state and federal agencies?



RFI (cont.)

Defining “violation”

- Should there be categories of violations?
- Should each day of a sale or offer sale of a non-certified or non-compliant model be considered a violation?
- How will the Commission determine “persistence of the violation”?
- Should nonpayment of a fine be, in itself, a violation?





RFI (cont.)



Determining the administrative penalty

- How should the Commission determine the number of noncompliant models being “offered for sale?”
- How should the seven factors be applied in determining the fines for manufacturers of non-certified appliances?
- What is a reasonable amount of time to allow the penalty to be paid?
- What should the penalty be for those who don’t pay the fine in the time specified?



Next Steps

- Evaluate comments
 - Post-workshop comments due by April 30, 2012
(Reference docket #12-AAER-1)
- Develop draft of proposed regulations
- Conduct another staff workshop after publication of draft proposed regulations
 - Another public comment period will follow
- File NOPA and ISOR with OAL to begin formal APA-rulemaking phase



For More Information

Subscribe to the 'appliance_enforcement' list server at:

<http://www.energy.ca.gov/listservers/index.html> or

<http://www.energy.ca.gov/appliances/enforcement/>

Send formal comment on this proceeding to:

Docket@energy.ca.gov, docket # 12-AAER-1

For general questions about the Appliance Efficiency
program: appliances@energy.ca.gov

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